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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,351	03/27/2002	Dana Paul Gruenbacher	8278	1392

27752 7590 10/29/2004

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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,351

Applicant(s)

GRUENBACHER ET AL.

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9 and 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

1. The request filed on October 7, 2004 for a Request for Continued Examination (RCE) under 37 CFR 1.114 (a)(3) based on parent Application No. 10/089,351 is acceptable and an RCE has been established. An action on the RCE follows.

Specification

2. The following informality in the specification is noted: on page 40, line 10, "acheating" should read --a heating--, i.e., the line reads "In another embodiment, Figures 44 and 45, of acheating element may include use" (please note the IFW of the originally filed papers). Appropriate correction is required.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed terminology. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The claim terminology which lacks such antecedent basis is as follows: (A) "said first side and said second side are joined in a face-to-face relationship", as now called for by claims 1 and 13. Correction of the following is required. It is suggested that the specification be amended to include this claim terminology.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 2, 4-9 and 11-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the

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application was filed, had possession of the claimed invention. Claims 1, 13 and 17 now call for "an activatable heating and/or cooling element". However, the original disclosure fails to describe or support how such a heating and/or cooling element is activated. Hence claims 1, 13 and 17 are directed to new matter.

6. Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 14 calls for the heating and/or cooling element to be located "on said first external surface". However, the original disclosure fails to describe or support such a location for the heating and/or cooling element. Hence claim 14 is directed to new matter.

7. Claims 17-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 17 calls for an "activatable self-enclosed" heating and/or cooling element "disposed within said product" for heating the product. However, the original disclosure fails to describe or support such a self-enclosed heating and/or cooling element or that the heating and/or cooling element is disposed within the product to heat the product. Hence claim 17 is directed to new matter.

8. Claims 17-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 17 calls for "a semi-enclosed applicator" having "an internal cavity" which "is externally accessible", "a rupturable reservoir containing said product disposed with said cavity", and "an activatable self-enclosed heating and/or cooling element disposed within said product for heating the product". However, the original disclosure fails to describe or support this particular embodiment of "a semi-enclosed applicator" having "an internal cavity" which "is externally accessible" with "a rupturable reservoir containing said

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disposed with said cavity”, as well as having “an activatable self-enclosed heating and/or cooling element disposed within said product for heating the product”. Hence claim 17 is directed to new matter.

9. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 19 calls for the reservoir to comprise “a distribution channel, where said distribution channel controls the dispensing rate and direction of said product from said reservoir”. However, the original disclosure fails to describe or support this particular embodiment, as noted above in paragraph 8 *supra*, which uses a reservoir comprised of “a distribution channel, where said distribution channel controls the dispensing rate and direction of said product from said reservoir”. Hence claim 19 is directed to new matter.

10. Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 20 calls for the heating and/or cooling element to be “disposed within said distribution channel”. However, claim 17, from which claim 20 depends, already claims that the heating and/or cooling element is disposed within the product. The original disclosure fails to describe or support an embodiment wherein the heating and/or cooling element is disposed both in the distribution channel as well as in the product, as called for by claim 20. Hence claim 20 is directed to new matter.

Claim Rejections - 35 USC § 103

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 1, 2, 4-7, 9, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sansonetti in view of Cahill. Sansonetti discloses a semi-enclosed applicator

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in the form of a mitten or glove for distributing a product having a first temperature onto a target surface having the claimed features including a first side having a first external surface (constituted by the upper hand portion of the mitt 10), a second side (constituted by the bottom hand portion of the mitt 10) wherein the first side and the second side are joined in a face-to-face relationship (note Fig. 3) and form an internal cavity (constituted by chamber 16) therebetween, the internal cavity 16 having an opening that is externally accessible (note Fig. 1), a rupturable reservoir 18 containing the product 20 located within the internal cavity (note Fig. 3) and proximate to the first side (note Fig. 3), and an activatable heating element (constituted by heating element 34) located proximate to the reservoir 18 (note Fig. 3) wherein the heating element 34 changes the first temperature of the product upon activation and prior to the product being released from the reservoir 18 to the target surface through the first side (i.e., through the reservoir 18 forming part of the first side, note Fig. 3). Sansonetti discloses that the product is released from the reservoir upon melting of the membrane 22 which seals the product within the reservoir (note lines 27-30 in col. 2). Although Sansonetti fails to disclose that the product 20 is released from the reservoir 18 in response to an application of pressure to the rupturable reservoir, attention is directed to Cahill who discloses another mitten or glove for use in the application of a hand cream having at least one product containing reservoir 3 sealed by a membrane 5 which ruptures when pressure is applied for that purpose (note lines 41-45 in col. 1) in order to effect a desired application of the hand-treatment vehicle or product to affected parts of the hand (note lines 2-5 in col. 2). It would have been obvious to one of ordinary skill in the hand care glove/mitten art, at the time the invention was made, to seal the reservoir of Sansonetti with a membrane that ruptures in response to pressure being applied thereto in view of the teachings of Cahill in order to better control the application of hand cream to specific affected parts of the hand. With respect to claim 2, the heating element (constituted by the heating element 34 and inner mitten 12) of Sansonetti is inherently in contacting engagement with the reservoir 18 (note Figs. 2 and 3) since the membrane 22 melts when heat is applied thereto (note lines 29-33 in col. 2). With respect to claim 4, Sansonetti further discloses that the applicator

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moisturizes and conditions skin to facilitate absorption of the hand cream (note lines 39-42 in col. 1). With regard to claim 5, Sansonetti additionally discloses that the product 20 is a hand cream, which creams are well known to contain such ingredients as emollients, oils and polymers. With respect to claim 6, the product 20 hand cream of Sansonetti inherently has shear-thinning or thixotropic properties since the heat aids in the absorption of the cream (note lines 39-42 in col. 1). With respect to claim 7, the product 20 hand cream of Sansonetti inherently has tactile properties such as greasiness or slipperiness. With respect to claim 9, Sansonetti additionally discloses that the first and second sides each comprise a functional side (note lines 6-8 in col. 1). With regard to claim 15, Sansonetti also discloses that the rupturable reservoir is provided with a frangible seal constituted by the membrane 22 having a resistance to bursting. With regard to claim 16, Sansonetti further discloses a barrier layer constituted by inner mitten 12 which is substantially impervious to the product and is disposed proximate to the first internal surface (note lines 23-27 in col. 2).

13. Claim 8 is rejected under 35 U.S.C. 103 as being unpatentable over Sansonetti in view of Cahill as applied to claims 1, 2, 4-7, 9, 13, 15 and 16 above. Although Sansonetti fails to disclose the chemical composition of the product 20 hand cream, using such ingredients as petrolatum, petroleum jelly, castor oil, octocrylene, tocopheryl acetate or non-volatile organo-substituted polysiloxanes in the hand cream formula would be an obvious matter of choice to the artisan skilled in the hand cream art depending upon the brand of hand cream used since such ingredients are well known constituents of hand cream formulas.

14. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sansonetti in view of Cahill as applied to claims 1, 2, 4-7, 9, 13, 15 and 16 above and further in view of Charos. Although Sansonetti fails to disclose that the applicator contains a massaging structure positioned behind the first external surface, attention is directed to Charos who discloses another heated hand cream mitt or glove having cavities 2 or 10 on the inner side of the external side (note Figs. 1-3) in order to effect a suction-massage action (note lines 20-24 in col. 2). It would have been obvious to one of ordinary skill in the heated hand cream mitt or glove

art, at the time the invention was made, to provide the inner side of the mitt of Sansonetti with cavities in view of the teachings of Charos in order to effect a suction-massage action.

Response to Arguments

15. Applicant's arguments filed October 7, 2004 have been fully considered but they are not deemed persuasive.

16. Applicants' argument with regard to the informality of the specification has been carefully considered. However, it is pointed out that no error occurred during the entry of the priority application into the IFW system. Only the papers, as originally filed, were scanned into the system. The scanning does not affect the spacing and spelling of characters in the document being scanned.

17. Applicants' argument regarding the rejection of claim 14 under the first paragraph of 35 U.S.C. 112 have been carefully considered. However, the portion of the specification pointed out by the applicants, i.e., line 28 on page 41, does not provide support for the heating and/or cooling element to be located "on said first external surface" but rather describes that the product (from the reservoir) is released onto the heating and/or cooling element (constituted by pouch 302) wherein the heating and/or cooling element (pouch 302) is pressed against the target surface. Even figures 50 and 51 merely support that the heating and/or cooling element (pouch 302) is disposed next to the reservoir and not "on said first external surface" of the first side of the applicator.

18. Applicants' argument regarding the rejection of claims 17-20 under the first paragraph of 35 U.S.C. 112 have been carefully considered. However, the portion of the specification pointed out by the applicants, i.e., lines 31-32 on page 42, does not provide support for "an activatable self-enclosed" heating and/or cooling element to be "disposed within said product for heating the product" or that the heating and/or cooling element is disposed within the product to heat the product but rather merely describes that the heating and/or cooling element is "located internally in the reservoir".

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19. Applicants' arguments with respect to the Sansonetti and Cahill references have been considered. However, it is pointed out that both references disclose releasing the product through the first side wherein the first side includes, as part thereof, the reservoir. The references require that the product be released through a wall of the reservoir to the target surface constituted by the hand inside the mitt.

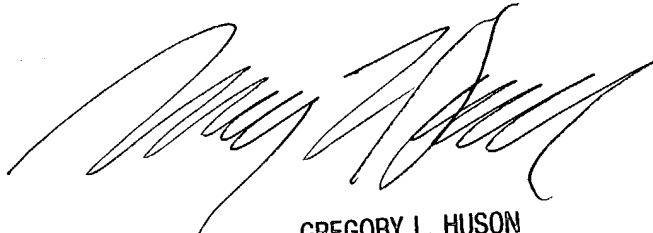
Conclusion

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044. In mid to late November, 2004, the examiner's office will move to the new complex in Alexandria, Virginia. Upon moving to the new complex, the examiner's new telephone number will be 571-272-4894.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kathleen J. Prunner

October 27, 2004


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